

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Scott Salyer, individually, and as Trustee
of the Scott Salyer Revocable Trust,

NO. C 05-03562 JW

Plaintiff,

**ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT
WITHOUT PREJUDICE**

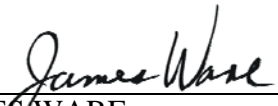
v.

Salyer American Fresh Food, et al.,

Defendants.

In light of the Court's October 24, 2006 Orders Granting Plaintiff's Motion for Reconsideration and leave to file the First Amended Complaint (see Docket Item No. 138), and Granting Plaintiff's Motion for Modification of the Scheduling Order (see Docket Item No. 139), the Court DENIES Defendants' Motion for Summary Judgment without prejudice as premature. The Defendants are invited to renote and refile their motion upon completion of discovery and pursuant to the parties' new case schedule.

Dated: October 24, 2006



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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9 **Dated: October 24, 2006**

Richard W. Wieking, Clerk

10 **By: /s/ JW Chambers**
11 **Elizabeth Garcia**
12 **Courtroom Deputy**